

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MARCEL MENDEZ, on behalf
of himself and others similarly situated,

Plaintiff,

Case No.: CV-11-6316

v.

Cote, J.
Maas, M.J.

PIZZA ON STONE, LLC (d/b/a ADRIENNE'S
PIZZA BAR), FRANK CASANO, PETER
POULAKAKOS and NICK ANGELIS,

Defendants.

**ORDER GRANTING PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF SETTLEMENT AND APPROVAL OF PLAINTIFF'S PROPOSED
NOTICE OF PENDENCY OF CLASS ACTION AND PROPOSED SETTLEMENT**

The above-entitled matter came before the Court on Plaintiff's Unopposed Motion for Preliminary Approval of Settlement and Approval of Plaintiff's Proposed Notice of Pendency of Class Action and Proposed Settlement ("Motion for Preliminary Approval") (Docket No. CV 11 6316).

I. Preliminary Approval of Settlement

1. Based upon the Court's review of the Declaration of C.K. Lee ("Lee Declaration"), and all other papers submitted in connection with Plaintiff's Motion for Preliminary Approval, the Court grants preliminary approval of the settlement memorialized in

the Settlement and Release Agreement (“Settlement Agreement”), attached to the Lee Declaration as Exhibit A.

2. The Court concludes that notice to the Class is appropriate.¹

3. The Court finds that the Settlement Agreement is the result of extensive, arm’s length negotiations.

4. A settlement conference held before Magistrate Judge Frank Maas on December 20, 2012, in which settlement negotiations were explored but not successful, reinforces that the Settlement Agreement is non-collusive.

II. Class Notice

5. The Court approves the Proposed Notice of Pendency of Class Action and Proposed Settlement (“Notice”), which is attached as Exhibit B to the Lee Declaration, and directs its distribution to the class.

6. The content of the Notice fully complies with due process and Federal Rule of Civil Procedure 23.

7. Pursuant to Federal Rule of Civil Procedure 23(c)(2)(B), a notice must provide:

the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must concisely and clearly state in plain, easily understood language: the nature of the action; the definition of the class certified; the class claims, issues or defenses; that a class member may enter an appearance through counsel if the member so desires; that the court will exclude from the class any member who requests exclusion, stating when and how members may elect to be excluded; and the binding effect of a class judgment on class embers under Rule 23(c)(3).

¹ The Court has already certified all non-exempt employees as a class under Federal Rule of Civil Procedure 23(e) (the “Settlement Class”).

Fed. R. Civ. P. 23 (c)(2)(B).

8. The Notice satisfies each of these requirements and adequately puts class members on notice of the proposed settlement.

III. Class Action Settlement Procedure

9. The Court hereby sets the following settlement procedure:

On or before January 31, 2013	Parties will move for Preliminary Approval of Settlement Agreement and Release
10 days after Preliminary Approval PROPOSED: _____, 2013	Defendants' counsel will provide the Settlement Administrator a mailing list in electronic form containing the names, last known addresses, email and telephone numbers for all Class Members as that information exists on file with Defendants.
20 days after Preliminary Approval: PROPOSED: _____, 2013	Mailing of Class Notice.
45 days after date of first mailing of Class Notice: PROPOSED: _____, 2013	Last day for Class Members to "opt out" of the Settlement or to submit written objections to the Settlement.
45 days after date of first mailing of Class Notice: PROPOSED: _____, 2013	Last day for Class Members to qualify as an Authorized Claimant by filing claim forms to join FLSA settlement.
48 days after first mailing of Class Notice: PROPOSED: _____, 2013	Class counsel will file with the Clerk of the Courts copies of any Opt-out Statements and send a final list of all Opt-out Statements to Defendants' Counsel by email.
60 days after date of first mailing of Class Notice: PROPOSED: _____, 2013	Last day for filing and service of papers in support of final Settlement Approval
_____, 2013 11:00 AM	Final Settlement approval hearing.

It is so ORDERED this ____ day of _____, 2013.

Honorable DENISE COTE
United States District Judge